FILE COPY

FILED
MAR 20 '59
JAMES R. BROWNING, Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 785

In the Matter of

DAVID E. HARTSHORN, *Petitioner*

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

DAVID E. HARTSHORN
Attorney Pro Se
Box 761
Washington 4, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutes Involved	3
Statement	3
Reasons for Granting the Writ	5
Conclusions	6
Appendix A—	
Statutes	1a
Appendix B	1a

AUTHORITIES CITED

Cases:

State of Florida ex rel. Atlantic Coast Line Railroad Company v. State Board of Equalizers et al, 30 A.L.R. 362 5

United States ex rel. Schumacher v. Marble, 3 Mackey 32 5

There has been no case to test the time limits set by law on Jury Trial after seizure.

Statutes:

45 Stat. 1415 et seq., c 416 (D.C. Code 1951) Title 16, Secs. 619-644 (particularly Sec. 629) 3

60 Stat. 790 (D.C. Code 1951) Secs. 5-701 (District of Columbia Redevelopment Act of 1945, Approved Aug. 2, 1946 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No.

In the Matter of

DAVID E. HARTSHORN, *Petitioner*

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Petitioner, David E. Hartshorn, prays that a writ of certiorari issue to review the Dismissal by the United State Court of Appeals for the District of Columbia on December 22, 1958 of an appeal in the above entitled case.

There was NO Opinion on the Dismissal by the District Court on August 19, 1958.

There was NO Opinion on the Dismissal of the Appeal to the Circuit Court of Appeals for the District of Columbia on December 22, 1958.

JURISDICTION

The Dismissal by the Court of Appeals for the District of Columbia was entered on December 22, 1958 and there was no hearing.

The Jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1254 (1) and on the Fifth Amendment to the Constitution Article V.

QUESTIONS PRESENTED

1. May a quasi public or Public Administrative Agency violate Statutory provisions set up to protect private owners of Real Estate?

2. May such an Agency violate protective provisions set up by Federal Statutes in taking private lands for transfer to private ownership and profit, by third parties when there is no emergency?

3. May such an Agency wantonly violate time limits for legal procedure in such a manner as to preclude possibility of former owners getting anything like just compensation for their properties?

4. May such an Agency retain for their exclusive employment as many Appraisers for Real Estate as possible so that it would be nearly impossible for a private owner to get a fair hearing in condemnation proceedings?

5. May such an Agency compel abandonment of real estate for a period of months before any possibility of Jury action thus leaving the real estate open to unlimited vandalism?

6. May such an Agency take these and other steps to insure that the home of a private owner can never bring the former owner more than a small fraction of what it had been worth to the former owner?

7. Is seizure of land void where laws are avoided?

These and related questions are in the files of this proceeding.

STATUTES INVOLVED

The Act of March 1, 1929, c 416, 45 Stat. 1415 et seq. (D.C. Code 1951 Title 16, Secs. 629 et seq. Also Sec. 11 line 7 et seq. that in land condemnation the—court shall forthwith set a date—not less than 10 days nor more than 20 days from the date of application for the trial of the issues—.

The Redevelopment Land Act of 1945, 60 Stat. 790, Secs. 5-701 et seq., requires a formal finding by the Commissioners of the District of Columbia of the condition of blight and unsanitary housing conditions. There was no such action.

STATEMENT

The original proceeding in the District Court for the District of Columbia was an "Order for delivery of possession" against all owners and tenants in the area between the Mall and Maryland Avenue and between 9th Street and 12 Street Southwest. This taking was by the District of Columbia Redevelopment Land Agency (hereinafter called the Agency) under the District of Columbia Redevelopment Act of 1945 approved August 2, 1946 as amended 60 Stat. 790 (D.C. Code 1951, Secs. 5-701 et seq.) with the bare, unsupported, false suggestion that this fine residential area near the Mall was blighted and the taking was

alleged to be under the Act of March 1, 1929 as amended, c. 416, 45 Stat. 1415 et seq. (D.C. Code 1951, Title 16).

This taking of title was on June 20, 1958 without prior notice to the owners. All owners and tenants were ordered to leave by Sept. 17, 1958. The papers served on us promised a jury trial on just compensation. It was discovered that no jury trial was expected in 1958 and none is yet in view so far as I have been notified although the laws cited, call for a jury trial within 20 days (Title 16 Sec. 629 of the D. C. Code of 1951). It may be that nearly a year will elapse between seizure and the jury trial, promised on Compensation. This timing follows observed practice of leaving the properties available to vandals over a long period of time before any jury is organized. The heavy loss falls on the former owner.

Other comprehensive steps were taken to insure there would be a blocking of any prospects for just compensation.

It was discovered by the petitioner that as many appraisers as possible of real property in the District of Columbia were put under firm retainer to the Agency and barred from acting against the interests of the Agency. Material efforts had been made to get other appraisers under contract or under pressure. As for the petitioner—owner herein certain appraisers have sought to serve as appraisers on my fine property without notice of being under retainer to the Agency and no warning of dubious loyalty. The few appraisers, who refused to sign up, are hard to get.

Other devices have been employed by the Agency to avoid just compensation on any prospect that prior owners could collect more than a small fraction of the value of the property taken by the Agency.

The Decision in the case *State of Florida ex rel. Atlantic Coast Line Railroad Company* v. *State Board of Equalizers,* 30 A.L.R. 362 states;

> Officers must obey a law found upon the statute books until in a proper proceeding its constitutionality is passed on.

This ruling decision is directly in point here.

The Decision in *United States ex rel. Schumacher* v. *Marble,* 3 Mackey 32, shows that:

> Administrative authorities are creatures of Statute and have only such powers as the statute confers on them. Their powers must be exercised in accordance with the statute bestowing such powers and they can act only in the mode prescribed by statute.

There has been no decision to test the timing regulations on seizure for redevelopment.

REASONS FOR GRANTING THE WRIT

1. It appears essential to have a comprehensive Decision on the rights of private owners in the Redevelopment activity; and

2. To have a clear definition of the limitations and duties of such an Agency for capture of property from private owners; and,

3. To have a definition of the limitations on transfer to other private owners for private profit. and,

4. To insure that home owners will not lose their life savings in the loss of their homes.

CONCLUSION

For the above reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

DAVID E. HARTSHORN B.S. LLB LPE
(C.E. EE. ME.)
Supreme Court Bar.
Box 761
Washington 4, D. C.

APPENDIX "A"

The Statutes involved have been cited and discussed in the body hereof.

The District of Columbia Redevelopment Land Act of 1945, 60 Stat. 790 is for the reduction of Slum conditions. These were not present in this area near the Nation's Mall.

The Act of March 1, 1929 c. 416 of 45 Stat. 1415 et Seq gives the Rules for such seizure and should be followed.

APPENDIX "B"

The entire file has been brought into The Supreme Court on Motion.

The Certified Record in the Circuit Court of Appeals for the District of Columbia is brought herewith.

APR 20 19
JAMES R. BROWNING

No. 785

In the Supreme Court of the United States

OCTOBER TERM, 1958

DAVID E. HARTSHORN, PETITIONER

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
PERRY W. MORTON,
Assistant Attorney General,
ROGER P. MARQUIS,
ROBERT S. GRISWOLD, JR.,
Attorneys,
Department of Justice, Washington 25, D.C.

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 785

DAVID E. HARTSHORN, PETITIONER

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On June 20, 1958, the District of Columbia Redevelopment Land Agency instituted condemnation proceedings in the United States District Court for the District of Columbia by filing a complaint and declaration of taking together with a deposit of estimated compensation pursuant to the Act of March 1, 1929 (45 Stat. 1415, as amended, 16 D.C. Code 619–644), and the District of Columbia Redevelopment Act of 1945 (60 Stat. 790, as amended, 5 D.C. Code 701, *et seq.*). A notice of proceedings was served on the same date on the landowners involved, including petitioner herein. On the Agency's motion of the same date, June 20, 1958, the court ordered delivery of possession effective September 17, 1958.

On July 19, 1958, petitioner filed a motion to vacate the order for delivery of possession. On August 19,

1958, the court, ruling that the condemnation was authorized, denied petitioner's motion. Trial of the just compensation issue was set for March 23, 1959, but has since been continued to May 20, 1959.*

Petitioner filed a notice of appeal from the order of August 19, 1958, denying his motion to vacate the order for delivery of possession. The Agency moved to dismiss the appeal on the ground that the order of August 19, 1958, was not a final judgment. On December 22, 1958, the court of appeals entered an order without opinion dismissing the appeal.

An order for delivery of possession entered on a declaration of taking is not a final order appealable under 28 U.S.C. 1291. *Catlin* v. *United States*, 324 U.S. 229. Nor did petitioner invoke the procedure for interlocutory appeals under 28 U.S.C. 1292(b) (added by Act of September 2, 1958, 72 Stat. 1770). The appeal was therefore properly dismissed without reaching the questions on the merits sought to be presented by petitioner. The petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

PERRY W. MORTON,
Assistant Attorney General.

ROGER P. MARQUIS,
ROBERT S. GRISWOLD, JR.,
Attorneys.

APRIL 1959.

*Petitioner has already received (on August 29, 1958) the estimated compensation of $14,838 deposited by the Agency in the registry of the court.

U.S. GOVERNMENT PRINTING OFFICE 1959

ILE COPY

Office-Supreme Court, U.S.
FILED
MAY 15 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 785

DAVID E. HARTSHORN, *Petitioner*

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

On Petition For a Writ of Certiorari to the United States Court of Appeals For the District of Columbia Circuit

PETITION FOR REHEARING

This is a Petition for Rehearing of a refusal of certiorari on May 4, 1959, in the above entitled case 785 of October term 1958.

This present petition is necessary in order to counter misleading information in the Memorandum in Opposition to prevent such misinformation from arising, as tacitly established fact, in a pending jury trial on

valuation and, more particularly to demonstrate my clear legal rights in this matter.

The grounds for this Petition involve glaring faults in the Memorandum in Opposition for which this petitioner has had no adequate opportunity to prepare reply in view of activities in trying to resettle after invasion of his home by vandals, the activities involved in meeting condemnation proceedings and in trying to hold employment. The pittance allowed for my fine home is not found adequate to prepare even a smaller shelter far from place of employment.

The reference to *Catlin* v. *United States*, 324 U.S. 229, is not pertinent since it was under an emergency war statute, but even it showed the right to appeal on the law questions, though permitting the emergency seizure as a military measure.

Further the citation, 72 Stat. 1770, is offside. This statute was approved only two weeks before my appeal and is not applicable to my case. Further it had only to do with interlocutory appeals *but* my appeal was from a final decision. If the decision by the District Court had sustained my contention that would have finally voided the irregular seizure as a final judgment from which the Agency would have appealed.

There is error in the footnote in the Memorandum. Payment was made well along in 1959 and not in 1958. Payment had to be accepted since vandalism was driving me out of my fine home and money was needed to move away. Further the small sum deposited was less than the value of the land under my fine brick buildings in the best residential part of the city, near the Mall. The lot to which title was held is more than 130 feet deep and the buildings on the lot are more

than 100 feet from North to South involving 13 rooms built by one of the best area builders (Mr. Knight) for his own home on retirement. Three modern baths and fireproof garages with two masonry walled, interior courts were included in the menage. The plumbing was complete in 1941 and had modern copper piping with automatic hot water and oil heat. Much of the flooring was more than one inch thick clear-white oak, tight as a drum head. The pittance offered is definitely not *just compensation* as required where private property is seized by the Government.

Further as shown in the record there has been consistent *Denial of Due Process of Law*. At present the trial, by jury required by Statute within 20 days and offered by the Agency is now on Motion in District Court to occur along in June which will probably kick it over to autumn, when this jury may be outlawed. There is statutory provision for jury *viewing* of the condemned property. This they tried to avoid by ordering evacuation months before jury organization, so vandals would destroy all value in the property. My action before the District Court was palliative but is to be circumvented by delays by the Agency.

It is humbly petitioned that the petition for certiorari be reconsidered in the light of this Petition for Rehearing and the writ of certiorari be issued to the Circuit Court of the District of Columbia.

/s/ DAVID E. HARTSHORN, L.P.E.
David E. Hartshorn
Box 761
Washington 4, D. C.
Member of the Supreme Court Bar.

CERTIFICATE

This petition for rehearing is made in good faith and is not for delay. Delay has proved impossible since the Agency states it is going ahead with destruction of my fine, fully modern 13-room, 3 baths and garages—show-place house, on the hill, near the Mall and between and fronting on two paved thoroughfares.

/s/ DAVID E. HARTSHORN
David E. Hartshorn
Box 761
Washington 4, D. C.